April 14, 2004

Mr. Robert E. Feldman, Executive Secretary
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429

Mrs. Jennifer J. Johnson, Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551
(Docket No. R-1180)

To Whom It May Concern:

BB&T Corporation ("BB&T") appreciates the opportunity to comment on the joint agencies' request for suggestions or ways to reduce the burden in rules categorized as Consumer Protection Lending Related Rules. BB&T is a regional financial holding company with numerous banks and non-bank subsidiaries. Our comments are as follows:

1. Truth in Lending (TIL), Regulation Z:

Section 226.23(c) states that unless a consumer waives the right of rescission due to a bona fide personal financial emergency, no money shall be disbursed nor any services performed until the rescission period has expired.

We feel that this consumer protection requirement has outlived its original intent for customers getting loans from a bank. It is a huge inconvenience for customers to have to wait three days extra to get their funds especially given that the customer has already had anywhere from 15 to 30 days of the loan processing/underwriting to consider the ramification of pledging the home as collateral. This should give the majority of our customers ample time. It also places additional work and time on closing agents, attorneys, and lenders as well as requiring the customer to have to come back to the bank to get their money. In addition, the rule creates many technical exceptions by lenders related to miscounting the three business days and also with interest accrual issues. It is rare that any of our customers rescind under normal market conditions. A rescission would tend to happen more often during a refinancing boom where a consumer put in applications with several lenders to get the best deal.

Many of our customers seek home equity lines simply for tax reasons. They fully understand that a security interest is being taken in their home but want the product to be able to deduct interest. These customers usually are sophisticated and consider the three-day waiting period a nuisance, not a consumer protection. In cases like these, financial institutions should at least be given the right to allow customers to waive the three-day period upon request of the customer. For these reasons, we feel it is too burdensome to require lenders of financial institutions/banks to have to prepare rescission forms and delay the disbursement of funds which places extra work on a number of people.

Customers are also very frustrated by this rule as they want their money at closing. A better approach might be to make this requirement exempt for customers that come into the bank to request a loan versus customers that are solicited for a loan. Another option would be to broaden the ability to rescind the loan by simply accepting a note of the customer's wish to waive the rescission period initially regardless of the reason. This is certainly one example where the benefits do not outweigh the burdens imposed by the regulation.

High Cost Home Loans: The federal law should be all that matters for these type loans. Too many states are jumping on the bandwagon to come up with their own anti-predatory lending laws which makes compliance on a federal and state level very cumbersome for lenders as the state laws are often more restrictive than the federal. In addition, Section 32 of Regulation Z requires additional disclosures and carries so much negative publicity that most banks have stopped making these loans. But for the ones that do, they are required to give a three-day notice prior to consummation but consummation is not defined in Regulation Z but left for state law interpretation. Federal law should clarify consummation for this section. The explanation for the calculation of total loan amount is also not clear.

While we agree with the intent behind the TIL Act to promote the informed use of consumer credit by requiring disclosures about the terms and costs, we have come to realize over the years that consumers only want to know their interest rate, monthly payment and the total closing costs. Consumers are still very confused about why there is a difference in the annual percentage rate (APR) and their quoted interest rate despite the fact that they are given the interpretive booklets. The finance charge also is not easily determined when there are third party fees. This process needs simplifying so all consumers can understand what the APR means and lenders can calculate it easier. Maybe a better alternative would be to disclose the interest rate and the total initial charges but not disclose an APR in the "material disclosures." Sometimes what is meant to help the consumer is really a problem for the financial industry and the consumer as well.

2. ECOA, Regulation B:

Section 202.13(b) requires a lender to note on an application or some form to the extent possible, the ethnicity, race, and sex of the applicants on the basis of visual observation or surname if the applicant chooses not to provide the information. We feel that by requiring the lender to complete the information, it is against what the customer requested and in many cases the accuracy from the lender could be in question as it requires the lender to make a guess (especially with race and ethnicity).

We feel that if the customer initially checked that he/she does not wish to disclose the information, it should be left at that.

Section 202.7(d)(1) of Regulation B needs further clarification. This section states, "*A creditor shall not deem the submission of a joint financial statement or other evidence of jointly held assets as an application for joint credit.*" In reading the preamble to this change and from reading other information (such as the FDIC's Financial Institution Letter 6-2004), it appears the intent of this regulatory amendment is to clarify that a joint financial statement does not constitute a joint application.

However, the commentary to this same section 202.7(d)(1)#3 states in the first sentence, "*A person's intent to be a joint applicant must be evidenced at the time of application*." We understand that a signature line on a financial statement is simply attesting to the accuracy of the document. We feel a signed application (when we have one) by the applicant and co-applicant should be sufficient evidence if we ask the question with a box to check, "Is this application to be joint credit, yes or no" or if we add additional verbiage above the signature line of the application where the applicant and co-applicant sign. Different regulatory agencies have given out different opinions on how to handle this requirement. For example, one examiner has told us that we must have an additional line for initials or signatures on the application or some other written form to further show joint intent other than the final signature. Another examiner said adding a statement above the signature line would suffice. Then we have received other information from different federal attorneys who have said oral permission of intent is acceptable if there are established procedures in place to document this. More <u>consistent</u> guidance is needed in this area between the different regulatory agencies.

The other problem is that many business loans do not have an application and thus, the question comes up as to whether or not a separate form must be developed to allow the applicants to sign that they are applying jointly or if the file could have other documentation noting joint intent. We feel for business loans that verbal confirmation of who intends to be obligated should be sufficient. Or, to perhaps add new verbiage to our notes and guaranty agreements. Suggested language for business loans might be "*By signing the Promissory Note or Guaranty Agreement, you are affirming that you intend to be obligated for repayment of the credit or to guarantee debt for the borrower as prescribed in this agreement*." In addition, the Residential Mortgage Fannie Mae 1003 form does not have model verbiage or a place for signatures or initials to indicate joint intent nor does the government have any plans to revise this form that we know of. A mortgage application should not have less stringent rules than a retail application. Some clarification is needed on alternative ways to comply with the need to evidence joint intent without requiring bank lenders to have to obtain additional signatures or to create new forms such as an addendum to the Residential Loan Application or for those loans without an application. Customers already feel the amount of paperwork is too much and this only adds to the customers' and lenders' frustration. Guidance is also needed on how to show joint intent on telephone or Internet applications.

More guidance is needed on Section 202.2(p) regarding the use of scores purchased from the credit bureaus such as Beacon, FICO, Experian, Navigator, etc. as to whether they are a credit scoring system or a judgmental system under Regulation B. The industry, I think, in general feels that these type scores are not "demonstrably and statistically" sound under Regulation B, because they are not based on the bank's empirical data. The credit bureau also assures us they do not consider age as an element. If the use of these scores is just a tool to help the lenders predict credit risk or bankruptcy and the loan is still underwritten as normal, I think we all agree it should be a judgmental system. We would like more guidance on which type of system would be applicable if the lender wanted to use the scores, not as a tool, but as an automatic denial, based only on the credit bureau score. We would also like to know if an automatic denial was used but not an automatic approval if that would still make the process judgmental since it was decided earlier that their scores were not empirically derived and did not consider age as a category.

Some consumer reporting agencies are now creating a separate pooled data scorecard of multiple creditors. There is confusion as to whether this type of scorecard is still considered to be judgmental or a true credit scoring system. It appears to be some hybrid type of credit scoring system as it has one or two application variables but it does not consider age. Bottom line, the distinction between a credit scoring system and a judgmental one has become blurred due to the fact that the industry has access to many products through consumer reporting agencies and they are used in different ways. More guidance would be appreciated on this matter.

3. Home Mortgage Disclosure Act (HMDA), Regulation C:

Section 202.2 of Regulation C states that refinancing means a new obligation that satisfies and replaces an existing obligation by the same borrower and that both the <u>existing</u> obligation and the <u>new</u> obligation are secured by liens on dwellings.
The new definition of "refinance" which removes the purpose test will certainly result in the addition of many more loans on a financial institution's LAR whose purpose had nothing to do with home improvement or home purchase. We feel the elimination of the purpose test goes against the spirit of the regulation for identifying home improvement and home purchase loans.

The revised definition of refinance makes no exception for <u>business</u> <u>purpose</u> loans. Many financial institutions have business purpose loans, other than for the original intent of home purchase or home improvement (i.e. machinery and equipment loans agricultural and commercial), which are <u>secured by a lien on a dwelling</u> thereby making it HMDA applicable at the time they are refinanced. This concept creates problems especially with agricultural loans secured by a lien on a dwelling. We feel that reporting these types of business purpose loans (other than those related to home purchases or improvements) is not the intent of HMDA and will skew results across the country. This will be a burden for the financial institutions as well as examiners to have to sort through these types of loans to explain variances since they are priced very differently than residential real estate loans.

There needs to be further clarification on broker/investor rules and the action taken between Regulation B and Regulation C. For instance, if a loan comes in from a broker and is incomplete, most banks have procedures to call the broker to request the additional information. If the broker never responds, the bank would show for HMDA, Regulation C, the action taken as file closed for incompleteness but Regulation B, Section 202.9(c)(3), appears to state that if the applicant (no mention of a broker) is informed orally of the need for additional information but does not respond, a notice, presumably a denial, must be sent. This could require the lender to issue two different actions taken to satisfy HMDA and Regulation B. This is too confusing unless it is permissible to rely on the third party rules just when dealing with brokers and investors.

While we have chosen not to report open-end Home Equity lines of credit on the HMDA LAR, we wanted to mention the inconsistencies throughout the regulation. If a lender were to report a Home Equity line of credit, the rule is to report only the amount of the line used for home purchase or home improvement. But, for a closed-end loan, the entire amount would be required to be reported as long as any portion is used for the purpose of home improvement or home purchase. This difference, I would think, would create a lot of confusion for lenders. In addition, there is inconsistency between the rate spread calculation determination date and the way the rate spread index is determined for HOEPA purposes which creates more confusion and errors. The rate spread index and calculation methods should be consistent in order to promote better accuracy.

Overall, HMDA is one of the most burdensome regulations for the financial industry. To ensure HMDA integrity, we have HMDA specialists in every lending department to review behind the lender all the HMDA fields before the LAR is filed. This requires many people since we are a large bank with a submission of thousands of LAR entries. This process takes thousands of man-hours to perform while there are questions as to the usefulness of the data in the industry. Ultimately, consumers will end up paying for all the data collection costs.

4. *Fair and Accurate Credit Transactions Act, FACT Act:*

The Consumer Credit Reporting Reform Act of 1996 amended the Fair Credit Reporting Act and permitted the Board of Governors of the Federal Reserve System to issue interpretations on how the FCRA may apply to financial institutions. The Federal Reserve did not issue an interpretation or a regulation. Now that we have the Fair and Accurate Credit Transaction Act of 2003 (FACT Act) and we are seeing the Federal Reserve issue interpretations on a section by section basis, it is putting a heavy burden on financial institutions in their attempt to track the requirements of the Act and section by section interpretations by the Federal Reserve. The Federal Reserve needs to provide financial institutions with the Part 222, Regulation V, Fair Credit

Reporting Act regulation that provides interpretations for the Act. This is common practice for all other Acts, and we need the same for the Fair Credit Reporting Act. For example, in the past, we have referred directly to the regulation to inquire on the specific formats, verbiage, requirements, etc.; however, for the new FACT Act, since there is no regulation yet, only section by section, we are having to refer back to the original Act which is very confusing and time consuming. We need a full regulation just like we have with the other Federal Reserve Acts and Regulations.

In addition, FACT Act requires furnishers (banks) of information to investigate disputes if they receive a dispute notice sent directly to the bank by the consumer instead of to the consumer reporting agency. After receiving notice of dispute from a consumer, the person that provided the information in dispute to a consumer reporting agency (bank) shall: conduct an investigation with respect to the disputed information; review all relevant information provided by the consumer with the notice; complete such person's investigation of the dispute and report the results of the investigation to the consumer before the expiration of the time period. If the investigation finds that the information reported was inaccurate, the bank must promptly notify each consumer reporting agency to which the person furnished the inaccurate information of that determination and provide to the agency any correction to that information that is necessary to make the information provided by the person accurate. In addition, if after researching, it is determined nothing is wrong with the item but the consumer continues to dispute the item, it is not clear whether the bank must code the item as still being in dispute or refer the customer to the credit bureau for coding the dispute. The new regulation, when issued, needs to provide more guidance on how to handle disputes received by the financial institutions directly from the consumer.

5. Consistency:

Consistent definitions between regulations would be extremely helpful and improve the lender's understanding and application of a regulation. For example, the definition of a dwelling between Regulation Z and HMDA. Also, consistency of the monitoring data requirements between Regulation B and Regulation C would be helpful.

Thank you for the opportunity to provide these comments. The volume of regulatory requirements facing the financial industry today presents a huge challenge for any bank. We commend you for trying to find ways to eliminate rules and regulations that are particularly burdensome or no longer provide meaningful information to the consumer.

Very truly yours,

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